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ORIGINAL

May 4, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: **EX PARTE** in Implementation of the Subscriber Carrier Selection Changes
Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning
Unauthorized Changes of Consumers Long Distance Carriers, CC Docket No. 94-129 ✓

Dear Ms. Salas:

Attached is a letter sent today to Chairman William E. Kennard in the above-captioned docket. A copy of this letter has been provided to other Commissioner's offices and to Common Carrier Bureau officials, as indicated. Copies are being provided for inclusion in the docket file.

Sincerely,


Mary L. Brown

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Jonathan B. Sallet
Chief Policy Counsel

May 4, 1999

William E. Kennard
Chairman
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

VIA FAX

Re: **EX PARTE** in Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, CC Docket No. 94-129

Dear Chairman Kennard:

MCI WorldCom today has filed a Motion for Stay Pending Judicial Review in the above-captioned docket. The filing seeks a stay of the liability rules that the Commission promulgated in December 1998, and that are scheduled to take effect May 17, 1999.

We present this motion reluctantly. The problem of how best to discourage unauthorized conversions of innocent consumers is not, in our view, an issue that is best settled in the rarified environment of federal appellate litigation. We had hoped, and continue to hope, to work cooperatively with the Commission and other interested parties toward the establishment of a third party administration system to achieve the Commission's policy objectives that it articulated in December.

We have done everything that the Commission asked us to do. In the Order promulgating the rules for which we seek a stay, the Commission itself noted, at paragraph 55, some of the flaws in its approach, and took the unusual step of *inviting* carriers to file for waivers. In fact, the Commission specifically established its timetable for the effective date of the liability rules with the goal of allowing for the consideration of waiver petitions to establish a third party mechanism.

To afford carriers time to develop and implement an industry-funded independent dispute resolution mechanism and to file waiver requests . . . , we delay the effective date of the liability rules set forth above until 90 days after Federal Register publication of this *Order*.¹

¹ Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, CC Docket No. 94-129, Second Report and Order, released December 23, 1998 at para. 56.

MCI WorldCom organized a working group of long distance carriers and immediately began extensive discussions on a mechanism that resulted, on March 30, 1999, in a joint proposal offered by virtually the entire long distance industry.² At the same time, the Joint Parties filed a request seeking an extension of time on the effective date of the liability rules. The Joint Parties requested that the Commission extend, for six months, the effective date of the rules, so that the rules could take effect at the same time that the third party administrator initiated service. Otherwise, carriers would be faced with the onerous problem of developing systems and processes in a desperate, costly and wasteful effort to comply with flawed and unworkable rules that virtually all parties concede need substantial modification. Similarly, consumers would be faced with the confusing result of being subject to a new set of procedural requirements to resolve their complaints, effective May 17, 1999, only to face new procedural requirements approximately six months later with the initiation of a consumer-friendly third party administration system.³

Significantly, there is widespread support in the record for the request to extend the effective date of the rules. The Consumer Federation of America said in its April 26, 1999 filing that "one thing is clear."

The Commission must stay the implementation of the liability rules and begin working on a third party administrator (TPA) approach that will provide a simple, comprehensive response to slamming in the competitive local and long distance telecommunications marketplace.⁴

The CFA observed that the Commission would do a "grave disservice to the public if it implemented its flawed approach" and then adopted the TPA plan for implementation later this year.

The CFA is not alone in its recommendation that the current rules be deferred. The Small Business Survival Committee, the MediaOne Group, and the Competition Policy Institute favor a deferred implementation date linked to the initiation of a third party administrator.⁵ Even incumbent local exchange carriers other than those represented in the group of Joint Parties⁶ have recommended the Commission grant the extension of time.⁷

² The Joint Petition for Waiver was filed by MCI WorldCom on behalf of itself, AT&T, Sprint, Qwest, Excel, Frontier, Comptel (following its merger with ACTA), and the Telecommunications Resellers Association. Collectively, these are referred to as the "Joint Parties." Cable & Wireless supported the Petition, and joined the group on our reply comments, filed April 26, 1999.

³ Alternatively, the motion sought a stay pending consideration of petitions for reconsideration.

⁴ CFA Comments at 1.

⁵ Small Business Survival Committee Comments at 4; MediaOne Group Comments at 2; Competition Policy Institute Comments at 1.

⁶ It should be noted that both Sprint and Frontier filed on behalf of their entire corporate interests, which include substantial incumbent local exchange carrier operations.

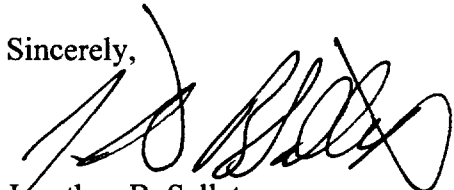
⁷ Bell Atlantic Comments at note 5. GTE Comments at 2, 9-10.

You should also be aware that the six month extension that we have requested is not an arbitrary date. The Joint Parties have had extensive conversations with potential vendors, and have carefully explored the issue of the minimum amount of time that would be required to establish the third party administrator. Even after a waiver is granted, we must constitute an industry board, issue a Request for Proposal, receive responses, select a winning bidder, negotiate a contract, and still have some time to allow the winning bidder and participating carriers to construct the third party operation. Six months from the grant of waiver appears to be the minimum amount of time required for these tasks.

Both the request for extension of time, and the Motion for Stay Pending Judicial Review that we filed today, are supported by extensive recitation of facts that demonstrate that the processes the Commission has asked the industry to implement on May 17th are unworkable. Pursuant to Commission direction and in good faith, MCI WorldCom and other interested parties have produced an alternative plan for third party administration that can be implemented this year, is substantially more efficient to operate, and, most importantly, will better serve consumers' interests in securing timely and fair resolution of their complaints.

MCI WorldCom would strongly prefer the Commission to grant the waiver petition and extension of time request. There should be no confusion caused by the presentation of the Motion for Stay Pending Judicial Review. We are presenting the stay motion only because our March 30, 1999 motion for extension of time remains pending with no action some two weeks before the rules are scheduled to take effect. We look forward to the opportunity to withdraw today's request upon favorable Commission consideration of the extension of time, and the industry's waiver proposal.

Sincerely,



Jonathan B. Sallet

CC: Susan Ness
Harold Furchtgott-Roth
Michael K. Powell
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Larry Strickling
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